

# **EXHIBIT A**

ORIGINAL

**FILED**

**JUN 10 1998**

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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CINEBASE SOFTWARE, INC.

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

30 L

CINEBASE SOFTWARE, INC., a California  
corporation,

Plaintiff,

vs.

MEDIA GUARANTY TRUST, INC., a Delaware  
corporation; ALLEN L. BROWN, JR., an individual;  
NATALIA X. KROL, an individual, JOSEPH  
ROSENFELD, an individual, THOMAS WILLS, an  
individual, CARL REISINGER, an individual and  
KATHERINE TOPPER, an individual,

Defendants.

Case No. C 98-1100 FMS

**FIRST AMENDED COMPLAINT  
FOR INJUNCTIVE RELIEF AND  
DAMAGES FOR:**

1. Copyright Infringement;
2. Lanham Act Violation;
3. Idea Misappropriation;
4. Breach of Implied Contract
5. Trade Secret Misappropriation;
6. Unfair Competition;
7. Trade Disparagement;
8. Breach of Fiduciary Duty;
9. Fraud;
10. Conspiracy; and
11. Intentional Interference with  
Economic Advantage;

**DEMAND FOR JURY TRIAL**

PLAINTIFF CINEBASE SOFTWARE, INC. ("Cinebase" or the "Company"), for its  
complaint against defendants, alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action for copyright infringement arising under the Copyright Act of 1976,  
as amended, 17 U.S.C. §§ 101 *et seq.*, reverse palming off under § 43 of the Lanham Act, 15 U.S.C.  
§ 1125(a), and related California statutory and common law. This Court has jurisdiction over

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1 Cinebase's copyright infringement and Lanham Act claims pursuant to 28 U.S.C. §§ 1331 and  
2 1338(a). The Court has supplemental jurisdiction over causes that arise under the statutory and  
3 common law of the State of California pursuant to 28 U.S.C. § 1367(a).

4 2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) in that: (1)  
5 Cinebase is informed and believes, and therefore alleges that all defendants reside in the same state  
6 and one or more of the defendants reside in this judicial district; and (2) a substantial part of the  
7 events giving rise to the claims herein took place in this judicial district. Venue is also proper in this  
8 district pursuant to 28 U.S.C. § 1400(a) in that defendants or their agents reside and/or may be found  
9 within this district.

10 3. Cinebase is informed and believes, and therefore alleges that defendants' activities  
11 forming the basis for this Complaint are carried out in interstate commerce and/or affect the business  
12 activities of Cinebase carried out in interstate commerce. Cinebase's interstate trade and commerce,  
13 described hereinafter, is carried out in part within this judicial district.

#### 14 INTRA-DISTRICT ASSIGNMENT

15 4. Pursuant to Northern District Local Rule 3-2(c), intra-district assignment of this  
16 action is proper in this Court's San Francisco Division in that a substantial part of the events giving  
17 rise to the claims herein occurred in the County of San Francisco.

#### 18 THE PARTIES

19 5. Cinebase is a California corporation with its principal place of business in Los  
20 Angeles, California.

21 6. Cinebase is informed and believes, and therefore alleges that defendant Allen L.  
22 Brown, Jr. ("Dr. Brown") is an individual who, at all times relevant hereto, was and is a resident of  
23 the State of California. Before leaving Cinebase on or about October 13, 1997, Dr. Brown was the  
24 Vice-President of Engineering and Product Planning, the Chief Technology Officer, and a member  
25 of the Executive Committee at Cinebase. (Defendant Dr. Brown should not be confused with  
26 Alan G. Brown, who is the Chairman of the Board of Directors of Cinebase. )

27 7. Cinebase is informed and believes, and therefore alleges that defendant Natalia  
28 ("Natasha") X. Krol ("Krol") is an individual who, at all times relevant hereto, was and is a resident

1 of the State of California. Before leaving Cinebase on or about October 7, 1997, Krol was the Vice-  
 2 President of New Business Development at Cinebase.

3 8. Cinebase is informed and believes, and therefore alleges that defendant Joseph  
 4 Rozenfeld is an individual who, at all times relevant hereto, was and is a resident of the State of  
 5 California. Before leaving Cinebase on or about October 10, 1997, Rozenfeld was a software  
 6 engineer at Cinebase.

7 9. Cinebase is informed and believes, and therefore alleges that defendant Thomas Wills  
 8 is an individual who, at all times relevant hereto, was and is a resident of the State of California.  
 9 Before leaving Cinebase on or about October 31, 1997, Wills was a software engineer at Cinebase.

10 10. Cinebase is informed and believes, and therefore alleges that defendant Carl Reisinger  
 11 is an individual who, at all times relevant hereto, was and is a resident of the State of California.  
 12 Before leaving Cinebase on or about November 14, 1997, Reisinger was a software engineer at  
 13 Cinebase.

14 11. Cinebase is informed and believes, and therefore alleges that defendant Katherine  
 15 Topper is an individual who, at all times relevant hereto, was and is a resident of the State of  
 16 California. Before leaving Cinebase on or about December 12, 1997, Topper was the Director of  
 17 New Business Development at Cinebase. (Where appropriate, defendants Dr. Brown, Krol,  
 18 Rozenfeld, Wills, Reisinger and Topper are hereinafter collectively referred to as the "Individual  
 19 Defendants").

20 12. Cinebase is informed and believes, and therefore alleges that defendant Media  
 21 Guaranty Trust, Inc. is a Delaware corporation with its principal place of business in San Carlos,  
 22 California and which, at all times relevant hereto, was and is doing business in the State of  
 23 California.

24 13. Cinebase is informed and believes, and therefore alleges that some of the Defendants  
 25 were the agents and/or employees of other co-defendants, and in doing the things hereinafter alleged,  
 26 were acting within the course and scope of such agency and/or employment and with the permission  
 27 and consent of each such co-defendant.

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**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

**The Business of Cinebase**

14. Cinebase's principal business was and is the development of digital media management software and unique solutions to the problems presented by management of large digital media databases. "Digital media," sometimes simply called "media," are mostly non-textual forms of conveying information such as film, video, audio, 3-D geometry files, pictures, computer-generated images, etc. Cinebase's business involves the development of software systems to manage "media," as distinguished from software systems that manage "documents." The term "document" refers mainly to textual information that is traditionally intended to exist in a printed format. One principal distinction between media and documents is the relative sizes of the materials. It takes much more space to represent digital media, such as images, than it does to represent formatted text.

15. In addition, distinctions between types of media materials give rise to fundamental differences in the techniques that must be employed to manage each. One way that media materials may be distinguished is based on whether they are "dynamic" or "static" in nature. Static media are still, such as images or drawings. Dynamic media embody movement, such as film, video and audio. Management of dynamic media presents particular challenges, due not only to the size of the material, but also to the need to deliver high volumes of media continuously so the user can view the dynamic media.

16. Another key distinction between different media objects is the "resolution" of the material. Resolution refers to the level of detail contained in a given portion of a material. For example, when a photograph is magnified many times, one can see that its image consists of a large number of individual dots spread out uniformly throughout the surface of the photograph. (The dots are of lighter or darker shade of black, in the case of a black and white photo, or of varying shades of color, in the case of a color photo.) A photograph with more dots per unit area is said to have a "higher resolution" than a photograph with fewer dots per unit area. Other media can also be represented in terms of higher or lower resolution. Dynamic media are most often high-resolution in nature. Static media are increasingly high-resolution, especially with improvements in image-

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1 generating techniques and in hardware and networking. In fact, large digital libraries of high-  
2 resolution static media are currently being created.

3 17. Software for managing high-resolution dynamic and static media materials must solve  
4 critical and difficult problems that are different and more complex than problems associated with  
5 low-resolution media and documents. Moreover, the environment in which such problems exist, and  
6 the processes, associations, methods and relationships that must be identified and understood to  
7 efficiently and effectively manage such media are not only very complicated, they are unique to the  
8 realm of high-resolution media.

9 18. Software and related technology developed for the purpose of managing large  
10 volumes of high-resolution dynamic and high-resolution static media materials are unrelated to and  
11 inapplicable to the problems associated with managing other types of materials such as low-  
12 resolution media and documents. In fact, until just the past several years, there were no companies  
13 anywhere dedicated to developing and implementing software solutions to the problems posed by  
14 managing large volumes of high-resolution media. Similarly, the number of software engineers and  
15 related technical managers knowledgeable about even the existence of such problems, let alone  
16 knowledgeable about approaches to solving those problems, was extremely limited. Indeed, up until  
17 just the past several years, a separately recognizable "digital media management" segment of the  
18 software development industry did not even exist. This segment of the software development  
19 industry is still in its infancy.

20 19. Cinebase was one of the very first companies to focus on the development of software  
21 for managing large volumes of high-resolution dynamic and static media. Cinebase has spent in  
22 excess of \$14 million developing the software, software architecture, novel ideas, technology and  
23 know-how necessary to design and develop high-resolution media management systems. The term  
24 "software architecture" refers to the overall structure and organization of a computer program and is  
25 used to describe the way that components of a software product fit together and interact with one  
26 another. Implementation of a software's architecture is accomplished through the creation of a  
27 source code. Source code is a series of instructions written in any one of several computer  
28 languages, such as COBAL, FORTRAN, BASIC, EDL, etc., depending in part on the type of



1 computer for which the program is intended. Object code is the machine readable binary translation  
 2 of the source code through which the computer receives its instructions.

3 20. Because of Cinebase's foresight in entering this field, and as a result of its substantial  
 4 expenditures of time, money and effort, Cinebase is not only recognized as a pioneer in this industry,  
 5 but was, at the time the Defendants began committing the wrongful acts herein alleged, in a unique  
 6 position to take a leading role in the expanding digital media management market.

7 21. Cinebase's competitive advantage is in large part dependent on the computer  
 8 software, software architecture, technology and know-how, trade secrets, novel ideas and other  
 9 confidential and proprietary information it has developed ("Cinebase's Intellectual Property"). It is  
 10 well known and understood among Cinebase's employees, and in particular its engineering and  
 11 technical staff, that Cinebase's Intellectual Property is confidential and proprietary in nature and must  
 12 be treated as such. As part of its efforts to protect its Intellectual Property, Cinebase employs a  
 13 variety of techniques including designating certain documents with a "Confidential" legend, limiting  
 14 access to materials and ideas on a need-to-know basis and, in the case of information maintained in  
 15 electronic form, employing password protection for its various computer systems and databases.

16 **Defendant Dr. Alan Brown**

17 22. On or about July 1, 1996, defendant Dr. Brown commenced work at Cinebase as the  
 18 Vice-President of Engineering and Product Planning, a member of Cinebase's Executive Committee,  
 19 and the company's Chief Technology Officer. Cinebase is informed and believes, and therefore  
 20 alleges that prior to his employment at Cinebase, Dr. Brown's work focused on software directed  
 21 towards document management and he had little or no experience with software developed for  
 22 managing large volumes of high-resolution dynamic and static media.

23 23. At Cinebase, Dr. Brown's primary responsibilities included: (i) planning and  
 24 developing Cinebase's software products; (ii) designing and supervising the design and  
 25 implementation of the software and the software architecture underlying the company's digital media  
 26 management software; (iii) recruiting and hiring the technical personnel necessary for Cinebase's  
 27 software development efforts; and (iv) supervising the development, coordination and  
 28 implementation of procedures for protecting Cinebase's Intellectual Property.

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24. Because of his positions and responsibilities, Dr. Brown had access to essentially all of the Company's Intellectual Property, including but not limited to, software, software architecture, product plans, competitive assessments, product design features and specifications, engineering documents, technical and software programming information relating to product development and implementation, novel ideas, technical know-how and information concerning the Company's marketing, market development activities and customer requirements. For example, Dr. Brown had access to drafts of and information concerning Weinstock Media Analysis's report on digital media asset management and GISTIC's report on the digital media management industry, both of which were created for the use and benefit of Cinebase. Indeed, Dr. Brown himself supervised the creation of much of the software architecture for Cinebase's product and actively participated in the gathering of marketing development materials for the Company. Cinebase is informed and believes, and therefore alleges, that much of this information existed on the hard drive of the laptop computer system provided by Cinebase to Dr. Brown for his use in connection with performing his various duties at Cinebase.

**Defendant Natasha Krol**

25. On or about December 1, 1996, defendant Krol began employment at Cinebase as the Vice-President of New Business Development. Krol's principal role was to investigate and develop new business opportunities for Cinebase. Krol focused her efforts on gathering information and establishing contacts in the advertising market with a view towards Cinebase's expansion into that market. Expansion into the advertising market was a part of Cinebase's next planned marketing activity and formed an integral part of Cinebase's formal Business Plan. Cinebase is informed and believes, and therefore alleges that Krol compiled and maintained a database of information concerning the advertising market. Cinebase expended considerable resources and money in support of this work performed by Krol for Cinebase. Cinebase is informed and believes, and therefore alleges that Krol never submitted any written report or analysis to Cinebase regarding her research.

26. Krol had access to much of Cinebase's confidential and proprietary business information including, but not limited to, financial information, marketing and market development activities, customer requirements, and product planning and design information. For example, Krol



1 had access to drafts of and information concerning Weinstock Media Analysis's report on digital  
 2 media asset management and GISTIC's report on the digital media management industry. Both of  
 3 these reports were created for the use and benefit of Cinebase. Cinebase is informed and believes,  
 4 and therefore alleges that much of this information existed on the hard drive of the laptop computer  
 5 system provided by Cinebase to Krol for her use in connection with performing her various duties at  
 6 Cinebase.

### 7 Defendants' Unlawful Scheme

8 27. Cinebase is informed and believes and therefore alleges that during the time that Dr.  
 9 Brown and Krol had in their possession Cinebase's Intellectual Property belonging to Cinebase, Dr.  
 10 Brown and Krol, wilfully and without Cinebase's authorization, copied all or substantial portions of  
 11 such Intellectual Property. Cinebase is informed and believes and therefore alleges that Dr. Brown  
 12 and Krol copied such Intellectual Property for use in developing and maintaining a software product  
 13 that would be marketed in competition with Cinebase.

14 28. In or about the Spring of 1997, Dr. Brown began engaging in conduct that was  
 15 contrary to the interests of Cinebase. Among other things, Dr. Brown failed to deliver accurate  
 16 product status reports in a timely fashion, he failed to return telephone calls from clients, vendors,  
 17 prospects and Cinebase staff, and he failed to fully attend important strategy meetings concerning the  
 18 development of Cinebase's products. Moreover, in meetings held in August and September of 1997,  
 19 Dr. Brown represented to the Executive Committee that he was employing his best efforts to recruit  
 20 technical people to meet Cinebase's needs. Dr. Brown was not, however, recruiting technical  
 21 personnel for Cinebase at this time. Rather, Dr. Brown had ceased all efforts to recruit for Cinebase  
 22 and, as alleged in more detail below, he, along with defendant Krol, was actively planning to steal  
 23 from Cinebase core members of the company's software engineering team.

24 29. Included among the core members of that team were defendants Rozenfeld, Wills and  
 25 Reisinger. These defendants were instrumental in developing and writing the source code for  
 26 Cinebase's next generation high-resolution media management software. As such, these defendants  
 27 were in possession of a great deal of Cinebase's Intellectual Property, including not only the software  
 28 architecture, source code, design, development and implementation of Cinebase's next generation

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1 digital media management software product, but also technical know-how regarding what to do and  
2 what not to do in designing and developing such a product. Such know-how, which was acquired by  
3 Cinebase as a result of the expenditure of substantial amounts of resources, is of tremendous value,  
4 including in particular to Cinebase. Such information is not generally known and would be of  
5 enormous value to a competitor of Cinebase. To legitimately acquire such information, a competitor  
6 of Cinebase would necessarily have to expend time and resources similar to those expended by  
7 Cinebase to develop the information.

8 30. Cinebase is informed and believes, and therefore alleges that, prior to their arrival at  
9 Cinebase, defendants Rozenfeld, Wills and Reisinger had little or no knowledge or expertise relating  
10 to the design and development of software for managing large volumes of high-resolution dynamic  
11 and static media. Consequently, defendants Rozenfeld, Wills and Reisinger not only had access to  
12 and possessed detailed knowledge of Cinebase's Intellectual Property, including its highly  
13 confidential and proprietary technology, technical know-how and computer software development  
14 information developed and created at Cinebase's expense by Cinebase employees for Cinebase, but  
15 they would not have possessed such information were it not for their employment at Cinebase.

16 31. Cinebase is informed and believes and therefore alleges that during the time that  
17 defendants Rozenfeld, Wills and Reisinger had in their possession Cinebase's Intellectual Property,  
18 they, wilfully and without Cinebase's authorization, copied all or substantial portions of it. Cinebase  
19 is informed and believes and therefore alleges that defendants Rozenfeld, Wills and Reisinger did so  
20 in order to develop a software product that would be marketed in competition with Cinebase.

21 32. Cinebase is informed and believes and therefore alleges that by copying all or a  
22 substantial portion of Cinebase's Intellectual Property, Defendants have developed, or are in the  
23 process of developing, one or more products or portions thereof which are identical or substantially  
24 similar to Cinebase's digital media management software product.

25 33. Cinebase is informed and believes and therefore alleges that by copying Cinebase's  
26 digital media management product, Defendants have incorporated, or are in the process of  
27 incorporating, into Media Guaranty Trust's existing products, programs or portions thereof which are  
28 identical or substantially similar to Cinebase's digital media management software product.

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34. The natural, probable and foreseeable result of the aforesaid conduct of Defendants has been and will continue to be to deprive Cinebase of business and goodwill, to injure Cinebase's relations with prospective customers, and to impose substantial expense on Cinebase to counteract the aforesaid conduct.

35. Cinebase is informed and believes and therefore alleges that it has lost or will lose revenues for its digital media management software product and has sustained or will sustain damages as a result of Defendants' wrongful conduct alleged herein. Defendants' wrongful conduct has also harmed Cinebase's goodwill and has deprived and will continue to deprive Cinebase of opportunities for expanding its goodwill.

36. During or about the spring and summer of 1997, Cinebase was negotiating the terms of an employment agreement with Dr. Brown, as well as other of its key employees. Included in these terms was a non-disclosure agreement addressing Cinebase's Intellectual Property. Dr. Brown objected to the terms of the non-disclosure agreement proposed by Cinebase and vigorously negotiated those terms. At one point he offered to provide Cinebase with an exemplar of a form of non-disclosure agreement he had encountered earlier in his career and which would, presumably, be acceptable to him. Dr. Brown never followed through on this offer and never signed a non-disclosure agreement with Cinebase. Cinebase is informed and believes, and therefore alleges that Dr. Brown prolonged negotiations on the non-disclosure agreement until he and Krol were ready to leave Cinebase and that he never intended to sign either a non-disclosure agreement or any employment agreement with Cinebase. Rather, he fraudulently used these negotiations to mask his and Krol's efforts, alleged hereinbelow, to steal Cinebase's Intellectual Property and key personnel.

37. Dr. Brown resigned his position at Cinebase on or about October 13, 1997. Krol resigned her position on or about October 7, 1997. Defendants Rozenfeld, Will and Reisinger resigned their positions at Cinebase on or about, respectively, October 10, 1997, October 31, 1997, and November 14, 1997. The abrupt departure of these five individuals from Cinebase, all within a few weeks of each other, turned out to be no coincidence. Rather, it was a direct result of an odious and deliberate scheme of defendants Dr. Brown and Krol to depart from Cinebase, steal key Cinebase employees and Cinebase's Intellectual Property, and use these to start a company

1 competing directly against Cinebase in the field of designing and developing software for managing  
2 high-resolution dynamic and static media.

3 38. Cinebase is informed and believes, and on that basis alleges that Dr. Brown and Krol  
4 began formulating their plans to steal Cinebase's Intellectual Property and key employees many  
5 months prior to their departure from Cinebase. Cinebase is informed and believes, and on that basis  
6 alleges that in or about mid-August, 1997, defendants Dr. Brown and Krol reduced part of their plan  
7 to writing and incorporated such writings into a slide presentation made to at least one venture  
8 capital banking group in an effort to raise capital for their proposed new company.

9 39. Dr. Brown and Krol implemented their plan and have formed defendant Media  
10 Guaranty Trust as a direct competitor of Cinebase. Moreover, Cinebase is informed and believes,  
11 and therefore alleges that defendants Dr. Brown and Krol have also followed through on their plans  
12 to steal Cinebase's Intellectual Property and employees and, along with defendants Rozenfeld, Wills,  
13 Reisinger, and Topper, are improperly using the information, knowledge and materials gained from  
14 Cinebase to unfairly compete against Cinebase.

15 40. Cinebase is informed and believes, and therefore alleges that, as part of Dr. Brown's  
16 and Krol's scheme to steal Cinebase's Intellectual Property for use in and by their own competing  
17 company, Dr. Brown and Krol, upon resigning from Cinebase, took with them the laptop computers  
18 that had been supplied to them by Cinebase for their use in performing their job duties. Cinebase is  
19 informed and believes, and therefore alleges, that these laptop computer systems contained large  
20 amounts of Cinebase's Intellectual Property. Dr. Brown and Krol retained these two computer  
21 systems for two entire months after their departure from Cinebase. The computer systems were only  
22 returned to Cinebase when the Company, after learning in mid-December 1997 of Dr. Brown's and  
23 Krol's plan to steal Cinebase's product, database and employees, demanded the return of the  
24 computer systems.

25 41. Upon examination of the laptop computer systems that were in Dr. Brown's and  
26 Krol's possession, it was learned that the hard drives had been completely erased (and partially  
27 written over as well), thereby concealing physical evidence that Dr. Brown and Krol had retained and  
28 asported Cinebase's Intellectual Property without the consent of Cinebase, and that Dr. Brown and

1 Krol intended to and did misappropriate said Intellectual Property for Media Guaranty Trust's and  
2 their own benefit and use.

3 42. Cinebase is informed and believes, and therefore alleges that Media Guaranty Trust,  
4 Dr. Brown and Krol willfully and with the specific intent to injure Cinebase and reduce its chances  
5 of recovering compensation for the injuries described herein, concealed and destroyed the  
6 information contained on the hard drives in order to destroy the evidence contained thereon  
7 concerning Defendants' misconduct.

8 43. By reason of the foregoing, Cinebase's ability to inspect the contents of the hard drive  
9 has been inhibited. That information is critical for the preparation and presentation of Cinebase's  
10 case and for Cinebase's opportunity to obtain reasonable compensation and/or a preliminary and  
11 permanent injunction, and Defendants should therefore be estopped from asserting that they did not  
12 and/or will not engage in the misconduct herein alleged.

13 44. Cinebase is informed and believes, and therefore alleges that even after their  
14 departure from Cinebase on October 5, 1997, Dr. Brown and Krol continued to steal confidential  
15 proprietary information from Cinebase through the assistance of defendant Topper, who remained an  
16 employee of Cinebase until her resignation on or about December 12, 1997.

17 45. On or about June 2, 1997, defendant Topper had been promoted by defendant Krol to  
18 the position of Director of New Business Development at Cinebase. Prior to that time, Topper had  
19 been a part-time administrative assistant at Cinebase. In her new position, Topper's principal role  
20 was to assist in the investigation and development of new business opportunities for Cinebase.  
21 Topper had access to much of Cinebase's confidential and proprietary business information  
22 including, but not limited to, marketing and market development activities, customer requirements,  
23 and product planning information.

24 46. Cinebase is informed and believes, and therefore alleges that, after Dr. Brown's and  
25 Krol's departure from Cinebase, but before Topper resigned from Cinebase, Topper acted as a  
26 "mole," secretly providing Dr. Brown and Krol with highly confidential proprietary marketing  
27 information developed at Cinebase's expense by an outside consultant who had been hired by  
28 Cinebase to work on its behalf. Cinebase is informed and believes, and therefore alleges that this



1 marketing information has been used by Defendants in planning and structuring their marketing  
2 strategies.

3 47. Cinebase is informed and believes and therefore alleges that Media Guaranty Trust,  
4 Dr. Brown, Krol, Rozenfeld, Wills and Reisinger have marketed, published, distributed and made  
5 derivative works from Cinebase's media management software product, and intend to do so in the  
6 future.

7 48. Cinebase is informed and believes and therefore alleges that Media Guaranty Trust,  
8 Dr. Brown, Krol, Rozenfeld, Wills and Reisinger, in producing, distributing, and/or publishing a  
9 digital media management software product, have removed all indications and designations of  
10 Cinebase as the true source of this software product and has and will continue to produce, distribute  
11 and/or publish this software under a different name, which has and will continue to confuse  
12 purchasers of Media's software product and lead them to believe that Cinebase's software product  
13 was developed by Media Guaranty Trust.

14 49. In addition, Cinebase is informed and believes, and therefore alleges that, as part of  
15 Dr. Brown's and Krol's scheme they, and/or defendants Rozenfeld, Wills, Reisinger and Topper,  
16 planned to do and did the following: (i) copied for Media Guaranty Trust's and their own  
17 information, use and benefit Cinebase's confidential, proprietary and copyrighted information from  
18 printed files and computer files and databases; (ii) usurped for Media Guaranty Trust's and their own  
19 personal use and benefit confidential and proprietary technology and know-how they had acquired at  
20 the expense of Cinebase and for the purpose of advancing Cinebase's interests; (iii) appropriated for  
21 Media Guaranty Trust's and their own personal use and benefit detailed marketing information,  
22 developed for Cinebase's benefit and at Cinebase's expense, regarding the digital media  
23 management market, including, but not limited to, the advertising segment of that market; and (iv)  
24 persuaded and caused key software engineer employees who were in possession of highly  
25 confidential and proprietary information to leave Cinebase and join Media Guaranty Trust.

26 50. Cinebase is informed and believes, and therefore alleges that Defendants are  
27 improperly using Cinebase's Intellectual Property they acquired as officers and employees of  
28 Cinebase to start up a business competing directly against Cinebase and to design, develop and



1 implement a high-resolution dynamic and static media management software product that will  
 2 compete directly against Cinebase's substantially similar product.

3 **FIRST CLAIM FOR RELIEF**

4 **COPYRIGHT ACT**

5 **COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 106**

6 **(Against All Defendants)**

7 51. Cinebase realleges and incorporates herein by reference Paragraphs 1 through 50 of  
 8 this Complaint as though set forth in full herein.

9 52. Cinebase owns the copyrights to and has obtained federal copyright registrations for  
 10 its Cinebase 2.0 computer program for management of high-resolution digital media, which includes  
 11 the software architecture, header file and program source codes, related design documents and object  
 12 codes (to the extent that each of these is within the subject matter of copyright under 17 U.S.C. § 102  
 13 and is covered by the Registration) (collectively, the "Copyrighted Works"). Attached hereto, as  
 14 Exhibits 1 and 2, are copies of the Certificates of Registration of Cinebase's version 2.0 digital  
 15 media management computer software.

16 53. The copyrighted works contain a substantial amount of material wholly original with  
 17 Cinebase and are copyrightable subject matter under the laws of the United States. Cinebase has  
 18 complied in all respects with the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* and all other laws  
 19 governing copyright.

20 54. Since the development of its copyrighted works, Cinebase has been and still is the  
 21 sole proprietor of all of its rights, title and interest in and to the copyrighted works.

22 55. Defendants had access to Cinebase's Copyrighted Works and, Cinebase is informed  
 23 and believes, and therefore alleges, Defendants obtained one or more copies of Cinebase's  
 24 Copyrighted Works during the time they were employed at Cinebase.

25 56. Cinebase is informed and believes and therefore alleges that Defendants have  
 26 infringed Cinebase's rights in and to the Copyrighted Works and that Cinebase's product is identical  
 27 or substantially similar, in whole or in part, to Cinebase's Copyrighted Works.

28 ///

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57. By means of the actions complained of herein, Defendants have infringed and will continue to infringe Cinebase's copyrights in the Copyrighted Works by using Cinebase's Copyrighted Works to produce, distribute and/or publish digital media management products, substantial portions of which were copied and/or derived from Cinebase's copyrighted digital media management computer program. Cinebase is informed and believes, and therefore alleges that Defendants intend to distribute and/or publish such software to various persons for Defendants' own commercial benefit, including but not limited to Defendants' prospective customers as well as Cinebase's prospective and existing customers.

58. The acts of Defendants constitute direct infringement, contributory infringement and inducement of the infringement of Cinebase's Copyrighted Works in violation of 17 U.S.C. § 106 *et seq.*

59. Cinebase is informed and believes, and therefore alleges that Defendants had prior knowledge of Cinebase's copyrights and, therefore, their infringement has been willful and deliberate and in conscious disregard of Cinebase's rights.

60. Defendants' actions as alleged above have directly and proximately caused Cinebase to suffer monetary damages in an amount that cannot readily be ascertained or calculated at this time, but which is believed to be in excess of \$5 million. Additionally, Cinebase has incurred liability for costs and attorneys' fees.

61. Further, Cinebase is suffering irreparable harm through the loss of its exclusive rights to the use of its Copyrighted Works and Cinebase will continue to suffer such harm unless said infringement is enjoined by this Court. Further, unless immediate injunctive relief as prayed for herein is granted, the infringement of Cinebase's Copyrighted Works will have been completed, rendering ineffectual a final judgment. By reason thereof, Cinebase has no adequate remedy at law for such conduct.

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**SECOND CLAIM FOR RELIEF****LANHAM ACT****REVERSE PASSING OFF UNDER 15 U.S.C. § 1125(a)****(Against All Defendants)**

62. Cinebase realleges and incorporates herein by reference Paragraphs 1 through 50 of this Complaint as though set forth in full herein.

63. Cinebase is informed and believes and therefore alleges that Defendants intend to market as Media Guaranty Trust's software product a product which is in fact Cinebase's product or is substantially similar thereto. Cinebase is informed and believes and therefore alleges that Media Guaranty Trust, Dr. Brown, Krol, Rozenfeld, Wills and Reisinger removed or otherwise removed all indications and designations of Cinebase as the source of said software product and has and will continue to distribute and/or publish this software under a different name.

64. Cinebase is informed and believes and therefore alleges that the aforesaid actions of Defendants were wilful, wrongful and calculated to trade upon Cinebase's unique position in the market by distributing and/or publishing Cinebase's product (or a product substantially similar thereto) as their own.

65. Cinebase is informed and believes and therefore alleges that the aforesaid conduct has and will continue to confuse purchasers of said software product and is likely to lead purchasers to believe that the supposed product of Media Guaranty Trust (actually Cinebase's) has been created and developed by Media Guaranty Trust. Such conduct constitutes unfair competition in violation of the Trademark Laws of the United States, 15 U.S.C. § 1125(a).

66. Defendants' actions as alleged above have directly and proximately caused Cinebase to suffer monetary damages in an amount that cannot be readily ascertained or calculated at this time, but which is believed to be in excess of \$5 million.

67. Defendants' actions as alleged above were malicious, wanton and oppressive and, therefore, Cinebase is entitled to recover reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

68. Further, Cinebase is suffering irreparable harm through the loss of its reputation and goodwill. Unless Defendants are enjoined and restrained by order of this Court, Defendants will

1 continue the practice as herein alleged, and the continuation of said conduct will cause further  
 2 damage to Cinebase. Cinebase will be irreparably damaged unless Defendants are enjoined from the  
 3 acts complained of herein.

### 4 THIRD CLAIM FOR RELIEF

#### 5 IDEA MISAPPROPRIATION/BREACH OF CONFIDENCE

#### 6 (Against the Individual Defendants)

7 69. Cinebase realleges and incorporates by reference Paragraphs 1 through 50 of this  
 8 Complaint as though set forth in full herein.

9 70. To the extent that any part of Cinebase's Intellectual Property, including its software  
 10 architecture, source codes, object codes, and related design documents consists of ideas which are  
 11 not novel and vague and are within the subject matter of copyright under 17 U.S.C. § 102 (the  
 12 "Protectable Ideas"), the Individual Defendants misappropriated such Protectable Ideas for their own  
 13 use and in breach of their legal duties to Cinebase.

14 71. At all relevant times, Cinebase transmitted its Protectable Ideas to the Individual  
 15 Defendants in confidence. At all times, Defendants understood and agreed that the Protectable Ideas  
 16 would be kept confidential because of, inter alia, the unique and novel nature of the Protectable  
 17 Ideas, further understanding and agreeing that the Protectable Ideas would not be used or disclosed  
 18 for any purpose other than for the benefit of Cinebase.

19 72. Cinebase submitted its Protectable Ideas to Defendants in reliance on the condition  
 20 and understanding that such would not be used or disclosed for any purpose not in furtherance of  
 21 Cinebase's interest or in any way contrary to Cinebase's interests. Defendants at all times understood  
 22 this condition of confidentiality and knowingly and willingly accepted and agreed to receive  
 23 Cinebase's Protectable Ideas on these conditions.

24 73. Despite this, Defendants breached this confidentiality with Cinebase by accepting  
 25 Cinebase's Protectable Ideas and then making use of them for their own personal gain and benefit  
 26 and to the detriment of Cinebase.

27 ///

28 ///

74. As a direct and proximate result of Defendants' conduct alleged herein, Cinebase has suffered monetary damages in an amount that cannot readily be ascertained or calculated at this time, but which is believed to be in excess of \$5 million.

#### **FOURTH CLAIM FOR RELIEF**

#### **BREACH OF IMPLIED-IN-FACT- CONTRACT**

**(Against All Defendants)**

75. Cinebase realleges and incorporates by reference Paragraphs 1 through 50 and 70 of this Complaint as though set forth in full herein.

76. Cinebase disclosed its Protectable Ideas to the Individual Defendants only in connection with their employment with Cinebase and on the condition and with the understanding that Defendants would not use such ideas for their own personal gain or to the detriment of Cinebase.

77. The Individual Defendants at all times voluntarily accepted disclosure of this information by Cinebase knowing the conditions on which this information was being tendered. The Individual Defendants' knowledge of these conditions is imputed to Media Guaranty by reason of the Individual Defendants' affiliation with and control of Media Guaranty. As a result, an implied-in-fact contract was thereby entered into between the parties for the right to use Cinebase's Protectable Ideas. As a result, Defendants impliedly agreed to compensate Cinebase if Defendants used Cinebase's Protectable Ideas for their own personal profit and gain.

78. Cinebase is informed and believes, and therefore alleges, that Defendants used Cinebase's Protectable Ideas for their own personal profit and gain without Cinebase's consent.

79. At all times relevant herein, Cinebase duly performed all conditions, covenants and promises on their part to be performed under this implied-in-fact contract except for any such condition or covenant Cinebase was prevented or excused from performing.

80. Defendants have breached and are breaching this implied-in-fact contract by, inter alia, using the Protectable Ideas to develop a digital media management software product in competition with Cinebase and by failing and refusing to compensate Cinebase for the use of their software product and ideas.

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81. Defendants' breach as alleged herein has directly and proximately caused Cinebase to suffer monetary damages in an amount that cannot readily be ascertained or calculated at this time, but which is believed to be in excess of \$5 million.

**FIFTH CLAIM FOR RELIEF**

**TRADE SECRET MISAPPROPRIATION UNDER**

**CAL. CIV. CODE § 3426**

**(Against All Defendants)**

82. Cinebase realleges and incorporates herein by reference Paragraphs 1 through 50 of this Complaint as though set forth in full herein.

83. At all times relevant herein, Cinebase possessed and continues to possess certain confidential, trade secret, and proprietary information concerning its business operations ("Trade Secret Information") including, but not limited to, the following:

- A. The software architecture and source codes of Cinebase's digital media management software, including all documents and/or files, or portions thereof, containing software architecture information. Examples of such documents include Cinebase's software reference manuals, object diagrams of the 2.x core, and notes from engineering department design meetings;
- B. Plans, design features, product specifications and engineering designs for Cinebase's digital media management product, including all documents and/or files, or portions thereof, containing such information.;
- C. Technical and software programming know-how relating to the design and development of digital media management software, including detailed information about what does and what does not work (negative research) in connection with such design and development efforts;
- D. Information concerning Cinebase's marketing plans and strategies, market research, market development activities, and market analyses;

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1 E. Cinebase's efforts to develop new customers, including identities of potential  
 2 clients and associated contacts, as well as the strategies behind such efforts;  
 3 and

4 F. The identity of and information concerning existing clients and the pricing and  
 5 types of services offered to those clients.

6 84. Because the Trade Secret Information identified above is not generally known to the  
 7 public or to other persons who can obtain economic value from its disclosure or use, is the subject of  
 8 efforts by Cinebase to maintain its secrecy, and derives independent economic value from not being  
 9 generally known, such information constitutes "trade secrets" under section 3426.1 of the California  
 10 Civil Code.

11 85. The Trade Secret Information is not generally known to the public or to other persons  
 12 who can obtain economic value from its disclosure or use for the following reasons, among others:

13 A. The totality of the Trade Secret Information identified above is unique to  
 14 Cinebase and could not independently be derived or obtained from other  
 15 sources without substantial expenditure of time and resources;

16 B. Cinebase makes the Trade Secret Information identified above available only  
 17 to authorized Cinebase employees and representatives for the sole benefit of  
 18 Cinebase under circumstances that give rise to a duty to maintain the secrecy  
 19 of such information and to limit its use.

20 86. Cinebase derives and continues to derive both actual and potential economic value  
 21 from the possession and use of such Trade Secret Information and from the fact that it is not  
 22 generally known to the public for the following reasons, among others:

23 A. It preserves Cinebase's substantial investment of time and resources in  
 24 identifying the existing need for digital media management software and  
 25 technology and in determining, through prototype development, whether a  
 26 viable product with proven technology can be produced;

27 B. It secures Cinebase's valuable investment of time and resources in designing,  
 28 developing and implementing its digital media management software product;

- C. It safeguards Cinebase's investment of time and resources in analyzing the market and potential customer's needs and in developing marketing plans and strategies for maximizing the value of its digital media management software product in an environment where the competitive advantage of such information may mean the difference between preserving and losing market share, as well as identifying the correct timing for implementing various marketing strategies;
- D. It secures the competitive advantage obtained by Cinebase in the form of "lead-time" as a result of Cinebase's early identification of a market's need and advance development of a product to meet that need;
- E. It permits Cinebase to develop new services and products to better serve the market by affording it an advantage over competitors in the form of "lead-time," without which the risk and cost of developing such new approaches would be prohibitively high;
- F. It affords Cinebase an opportunity to increase market share by allowing it to develop and implement its sales strategies before its competitors have time to anticipate and respond to such actions.

87. At all times relevant herein, Cinebase undertook reasonable efforts under the circumstances to maintain the secrecy of such Trade Secret Information, including but not limited to the following: (i) designating appropriate documents with a "Confidential" legend; (ii) limiting access to confidential documents on a need-to-know basis; and (iii) in the case of proprietary information maintained in electronic form, employing password protection its various computer systems and databases.

88. As explained above, during the course of their employment at Cinebase, the Individual Defendants had access to the Trade Secret Information, including but not limited to Cinebase computer and file records containing such information. As the Individual Defendants were fully aware, such access was authorized by Cinebase only to the extent necessary for proper

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1 performance of the Individual Defendants' respective duties and responsibilities and only for the  
2 benefit of Cinebase.

3 89. During the entire course of their employment at Cinebase, the Individual Defendants  
4 were, and still are, each under a duty to maintain the secrecy of such Trade Secret Information and to  
5 limit the use of such information to those circumstances authorized by Cinebase and for the  
6 exclusive benefit of Cinebase.

7 90. As described above, the Individual Defendants each resigned (except for Topper, who  
8 was terminated) from their respective positions at Cinebase and formed and/or started work for  
9 Media Guaranty Trust, a competing company in the business of developing digital media  
10 management software and technology.

11 91. Cinebase is informed and believes, and therefore alleges that Defendants have  
12 misappropriated Cinebase's Trade Secret Information and/or are using the Trade Secret Information  
13 to:

- 14 A. Establish a business that is competing directly against Cinebase in the digital  
15 media management industry;
- 16 B. Design and develop software for the management of large volumes of high-  
17 resolution dynamic and static media, in competition with Cinebase; and
- 18 C. Develop and implement marketing plans to penetrate various aspects of the  
19 digital media management market, in competition with Cinebase.

20 92. Cinebase is further informed and believes, and therefore alleges that the Individual  
21 Defendants' ownership of, interest in and/or employment with defendant Media Guaranty Trust  
22 constitutes a threatened and/or actual misappropriation of Cinebase's Trade Secret Information by all  
23 Defendants in that their association with Media Guaranty Trust will require the inevitable use and/or  
24 disclosure of Cinebase's Trade Secret Information. Cinebase is informed and believes, and therefore  
25 alleges that the positions of defendants Dr. Brown, Rozenfeld, Wills and Reisinger at Media  
26 Guaranty Trust involve the design, development, and implementation of software directed to the  
27 management of large volumes of high-resolution media. Prior to their employment at Cinebase,  
28 these individuals did not possess significant knowledge regarding such software. Rather, they gained

1 knowledge in this area by virtue of their employment at Cinebase and as a result of Cinebase's  
2 expenditure of money and resources. It will not be possible for them to perform their functions at  
3 Media Guaranty Trust without making direct and substantial use of the technical know-how they  
4 gained through their employment at Cinebase. Such information includes not only methods,  
5 processes and approaches developed at Cinebase for solving problems associated with the  
6 management of large volumes of high-resolution media, but also the information associated with the  
7 mistakes and wrong turns taken by Cinebase's employees in learning how to overcome problems in  
8 the field.

9 93. Cinebase is informed and believes, and therefore alleges, that defendant Krol's  
10 position at defendant Media Guaranty Trust is directly related to marketing and market development  
11 for software designed for the management of large volumes of high-resolution dynamic and static  
12 media. This is the same work Krol did for Cinebase. Moreover, Cinebase is informed and believes,  
13 and therefore alleges that the specific area to which Krol's activities at Cinebase were directed, *i.e.*,  
14 the advertising segment of the digital media management market, is the principal area on which  
15 Krol's efforts will be focused on behalf of defendant Media Guaranty Trust. Under such  
16 circumstances, it will not be possible for Krol to perform her duties at Media Guaranty Trust without  
17 making direct and substantial use of the extensive marketing information she gained through her  
18 employment at Cinebase.

19 94. Based on their actions as alleged above, including their asportation of Trade Secret  
20 Information when they left the Company, Cinebase is informed and believes, and therefore alleges,  
21 that Defendants' use of Cinebase's Trade Secret Information is not only inevitable, but is actual and  
22 ongoing.

23 95. Defendants' actions as alleged above have directly and proximately caused Cinebase  
24 to suffer monetary damages in an amount that cannot readily be ascertained or calculated at this time,  
25 but which is believed to be in excess of \$5 million.

26 96. The Defendants' actions as alleged above were willful and malicious, and therefore,  
27 Cinebase is entitled to recover reasonable attorneys' fees pursuant to Cal. Civ. Code § 3426.4, as  
28 well as exemplary damages under Cal. Civ. Code § 3426.3.

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**SEVENTH CLAIM FOR RELIEF****TRADE DISPARAGEMENT****(Against Dr. Brown and Krol)**

103. Cinebase realleges and incorporates herein by reference Paragraphs 1 through 50 of this Complaint as though set forth in full herein.

104. Cinebase is informed and believes, and therefore alleges that defendants Dr. Brown and Krol, both prior to and subsequent to their departure from Cinebase, have willfully, without justification, and without privilege caused to be communicated to customers, prospective customers, strategic partners, potential strategic partners and venture capitalists defamatory and disparaging statements of and concerning Cinebase's business and products. Cinebase is informed and believes, and therefore alleges that these defamatory and disparaging statements were understood by those to whom they were communicated as statements that were of and concerning Cinebase's business and products.

105. Dr. Brown's and Krol's statements disparaged Cinebase's business and products in that they falsely stated that Cinebase's digital media management products were inferior and that the company was on the verge of "imploding" due to lack of quality management and leadership and would, therefore, shortly cease to exist.

106. Dr. Brown's and Krol's statements were false and were made either with knowledge of their falsity or with reckless disregard for their truth or falsity. Cinebase is informed and believes, and therefore alleges that as a direct and proximate result of Dr. Brown's and Krol's statements, customers, prospective customers, and prospective strategic partners have been deterred from entering into relationships with Cinebase and from otherwise dealing with Cinebase.

107. Cinebase is informed and believes, and therefore alleges that as a direct and proximate result of Dr. Brown's and Krol's statements, venture capitalists have been deterred from supplying Cinebase with the capital necessary to run and advance Cinebase's business and from otherwise dealing with Cinebase.

108. Dr. Brown's and Krol's conduct as alleged herein has directly and proximately caused Cinebase to suffer monetary damages in an amount that cannot readily be ascertained or calculated at



1 this time, but which is believed to be in excess of \$5 million. Additionally, Cinebase has incurred  
2 and will incur liability for costs and attorneys' fees.

3 109. As a result of the conduct of Dr. Brown and Krol alleged herein, Cinebase is suffering  
4 irreparable harm and will continue to suffer such harm unless Dr. Brown's and Krol's conduct is  
5 enjoined.

6 110. Dr. Brown's and Krol's acts as alleged herein were done willfully, fraudulently,  
7 oppressively and maliciously in a conscious attempt to cause injury to Cinebase and, thus, Cinebase  
8 is entitled to an award of punitive and exemplary damages.

### 9 EIGHTH CLAIM FOR RELIEF

#### 10 FRAUD

#### 11 (Against Dr. Brown)

12 111. Cinebase realleges and incorporates herein by reference Paragraphs 1 through 50 of this  
13 Complaint as though set forth in full herein.

14 112. In Executive Committee Meetings held in August and September of 1997, Dr. Brown  
15 'represented to the Executive Committee that he was employing his best efforts to recruit technical  
16 people to meet Cinebase's needs. In or about March of 1997, Dr. Brown entered' into negotiations  
17 with Cinebase over non-disclosure agreements to be entered into by and between Cinebase and its  
18 employees. In these negotiations, which lasted virtually until his sudden departure from the  
19 Company, Dr. Brown repeatedly falsely represented that he intended to enter into such an agreement,  
20 stating that he would provide Cinebase with an exemplar of a form of agreement that would be  
21 acceptable to him. As Cinebase's Chief Technology Officer, Dr. Brown's refusal to enter into a non-  
22 disclosure agreement with Cinebase, along with his representation that he intended to provide  
23 Cinebase with an acceptable form of agreement and his failure to do so, resulted in Cinebase being  
24 unable to obtain such agreements from its other technical staff members. Indeed, Cinebase is  
25 informed and believes, and therefore alleges that Dr. Brown refused to even present Cinebase's  
26 proposed non-disclosure agreement to his technical staff.

27 113. In addition, during these negotiations, Dr. Brown repeatedly represented that he  
28 intended and was willing to enter into an employment agreement with Cinebase, even going so far as

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1 to sign, on August 27, 1997, an Executive Term Sheet describing, in detail, the terms and conditions  
2 of his employment with Cinebase and representing in writing his willingness to enter into an  
3 employment agreement containing broad non-disclosure and non-compete provisions.

4 114. Cinebase is informed and believes, and therefore alleges, that the above-stated  
5 representations were false and misleading at the time they were made, that Dr. Brown knew these  
6 representations were false when made, and that the representations were made with the intent to  
7 defraud and mislead Cinebase.

8 115. At the time Dr. Brown made these misrepresentations, and at all times up to and  
9 including the time Dr. Brown resigned from Cinebase, Cinebase was ignorant of the falsity of Dr.  
10 Brown's misrepresentations and believed them to be true, and therefore relied on them to Cinebase's  
11 detriment. The true facts, which Dr. Brown actually concealed from Cinebase, were that Dr. Brown  
12 had already made plans to leave Cinebase to start a company competing directly against Cinebase  
13 and he had no intention of signing either a non-disclosure agreement or an employment agreement  
14 with Cinebase, or performing technical-employee recruiting efforts on Cinebase's behalf. Had  
15 Cinebase been aware of these facts or of the falsity of Dr. Brown's representations, Cinebase would  
16 have taken actions to ensure that its needs for technical employees were met and that its employees  
17 signed appropriate non-disclosure agreements prior to their leaving the company.

18 116. Cinebase's reliance was justifiable. At the time Dr. Brown never indicated or  
19 revealed his intent or desire to leave the company, and was seemingly carrying out his job  
20 responsibilities. Accordingly, Cinebase acted reasonably in accepting Dr. Brown's statements and  
21 could not be expected to conduct an independent investigation into the truth of such statements.

22 117. As a direct and proximate result of Dr. Brown's fraudulent conduct as herein alleged,  
23 Cinebase has suffered a lack of adequate technical and support staff, thereby seriously endangering  
24 its ability to satisfy its customers needs and, more importantly, make timely advances in the  
25 development of its software product so as to be able to maintain its leading position in the digital  
26 media management industry. Furthermore, as previously alleged, the Individual Defendants have  
27 misappropriated Cinebase's Intellectual Property and are making use of it for Media Guaranty Trust's  
28 and their own benefit. As a direct and proximate result of Dr. Brown's fraud as herein alleged,

1 Cinebase has been deprived of having written contracts with several of the Individual Defendants  
2 that it would otherwise have secured but for Dr. Brown's fraudulent misrepresentations.

3 118. Dr. Brown's conduct as alleged herein has directly and proximately caused Cinebase  
4 to suffer monetary damages in an amount that cannot readily be ascertained or calculated at this time,  
5 but which is believed to be in excess of \$5 million.

6 119. The aforementioned conduct of Dr. Brown constituted intentional misrepresentations  
7 and concealments of material facts known to Dr. Brown, made with the intention on the part of Dr.  
8 Brown of depriving Cinebase of property and/or legal rights or otherwise causing injury. Dr. Brown  
9 thereby acted with fraud, malice and oppression towards Cinebase. Dr. Brown's conduct described  
10 herein was despicable conduct that subjected Cinebase to cruel and unjust hardship in conscious  
11 disregard of Cinebase's rights, so as to justify an award of exemplary and punitive damages.

#### 12 **NINTH CLAIM FOR RELIEF**

#### 13 **INTENTIONAL INTERFERENCE WITH ECONOMIC ADVANTAGE**

#### 14 **(Against Media Guaranty Trust, Dr. Brown and Krol)**

15 120. Cinebase realleges and incorporates herein by reference Paragraphs 1 through 50 of  
16 this Complaint as though set forth in full herein.

17 121. Cinebase is informed and believes, and therefore alleges that Media Guaranty Trust,  
18 Dr. Brown and Krol have made false and misleading representations to Cinebase's customers,  
19 prospective customers, strategic partners, potential strategic partners and potential venture capitalists  
20 -- including at the least Hambricht & Quist -- concerning the quality of Cinebase's product, the  
21 ability of Cinebase to maintain and improve its product, and Cinebase's ability to survive and thrive  
22 as a company. There may be other persons or entities to whom such false and misleading  
23 representations have been made. Cinebase is informed and believes, and therefore alleges that these  
24 false and misleading representations are interfering with Cinebase's prospective economic  
25 relationships with the above-mentioned customers, prospective customers, strategic partners and/or  
26 prospective strategic partners and are impairing Cinebase's ability to obtain venture capital. Media  
27 Guaranty Trust, Dr. Brown and Krol knew of Cinebase's relationships and prospective relationships  
28 with these parties when making such misrepresentations.

122. These actual and contemplated business relationships carry the probability of future economic benefit to Cinebase.

123. Cinebase is informed and believes that Media Guaranty Trust, Dr. Brown and Krol have intentionally made these statements to persons with whom Cinebase is doing and may do business in order to interfere with and disrupt these actual and potential business relationships. Cinebase is informed and believes, and therefore alleges that Media Guaranty Trust, Dr. Brown and Krol knew and willfully ignored that the above-stated actions would disrupt these actual and prospective economic relationships.

124. Media Guaranty Trust's, Dr. Brown's and Krol's actions threaten to cause Cinebase to lose actual and potential customers, actual and potential strategic alliances, and the opportunity to obtain venture capital to fund its business.

125. Cinebase is informed and believes, and therefore alleges that Media Guaranty Trust's, Dr. Brown's and Krol's actions alleged herein have directly and proximately caused Cinebase to suffer monetary damages in an amount that cannot readily be ascertained or calculated at this time, but which is believed to be in excess of \$5 million. Additionally, Cinebase has incurred and will incur liability for costs and attorneys' fees.

126. The loss of these actual and potential business relationships will cause Cinebase considerable economic and non-economic damage, much of which is irreparable and not compensable in money damages. Cinebase is therefore entitled to a preliminary and permanent injunction against Media Guaranty Trust, Dr. Brown and Krol to prevent such threatened and/or actual interference.

127. Media Guaranty Trust's, Dr. Brown's and Krol's acts as alleged herein were done willfully, fraudulently, oppressively and maliciously in a conscious attempt to cause injury to Cinebase and, thus, Cinebase is entitled to an award of punitive and exemplary damages.

**TENTH CLAIM FOR RELIEF****BREACH OF FIDUCIARY DUTY****(Against Dr. Brown and Krol)**

128. Cinebase realleges and incorporates herein by reference Paragraphs 1 through 127 of this Complaint as though set forth in full herein.

129. Dr. Brown and Krol were officers of Cinebase, members of Cinebase's Executive Committee, and trusted employees of the company. As such, defendants Dr. Brown and Krol owed Cinebase fiduciary duties, including the duties to act towards Cinebase fairly, honestly, in good faith and with undivided loyalty. They also owed to Cinebase the duties to avoid conflicts of interest, to maintain the confidentiality of Cinebase's Trade Secret Information and all other proprietary or confidential information, and to refrain from any act, or omission, that was calculated or likely to:

- A. Injure Cinebase;
- B. Interfere with Cinebase's existing or prospective advantageous economic relationships;
- C. Result in disclosure of Cinebase's Trade Secret Information Protectable Ideas or other confidential or proprietary information to third parties;
- D. Constitute misappropriation or unauthorized use of Cinebase's Intellectual Property, including its Copyrighted Works, Trade Secret Information, Protectable Ideas or other confidential or proprietary information; or
- E. Injure the representation and goodwill of Cinebase.

130. Following their resignation from Cinebase, defendants Dr. Brown and Krol continued to owe a duty to Cinebase to refrain from any act, or omission, calculated or likely to disclose to third parties Cinebase's Trade Secret Information and all other confidential or proprietary information, acquired during the course of their employment at Cinebase or to misappropriate to their personal advantage, or utilize in competition with Cinebase, such Trade Secret Information or other confidential or proprietary information or Copyrighted Works.

131. Cinebase is informed and believes, and therefore alleges that during their employment at Cinebase, defendants Dr. Brown and Krol breached their fiduciary duties to Cinebase, as alleged

herein, including by:

- A. Actively planning to steal and stealing Cinebase's Intellectual Property, including its Trade Secret Information, Protectable Ideas and Copyrighted Works, as well as key employees of Cinebase's software engineering team;
- B. Acting directly against the best interests of Cinebase by actively planning to start a company competing directly against Cinebase;
- C. Soliciting key Cinebase employees to work for the company that defendants Dr. Brown and Krol planned to form upon their departure from Cinebase;
- D. Secretly and surreptitiously preparing to commence active, unfair competition with Cinebase following their resignation from the company;
- E. By making fraudulent statements to and fraudulently concealing information from Cinebase; and
- F. Making disparaging statements concerning Cinebase.

132. Cinebase is informed and believes and therefore alleges that, subsequent to their departure from Cinebase, defendants Dr. Brown and Krol breached their ongoing fiduciary duties to Cinebase by:

- A. Engaging in unlawful and unauthorized misrepresentation, use of Cinebase's Copyrighted Works, Protectable Ideas, Trade Secret Information and other confidential and proprietary information;
- B. Intentionally interfering with Cinebase's prospective economic advantage;
- C. Unfairly competing with Cinebase through unauthorized use of Cinebase's Copyrighted Works, Trade Secret Information, Protectable Ideas and other confidential and proprietary information; and
- D. Maliciously concealing and destroying information contained on Cinebase's computer systems.

133. As a result, Dr. Brown's and Krol's actions alleged herein have directly and proximately caused Cinebase to suffer monetary damages in an amount that cannot readily be ascertained or calculated at this time, but which is believed to be in excess of \$5 million.



134. The breaches of fiduciary duty by Dr. Brown and Krol were undertaken willfully and maliciously, with the intent of harming Cinebase in order to advance the economic interests of Dr. Brown and Krol and, therefore, Cinebase is entitled to an award of punitive and exemplary damages.

135. As a result of the breaches of fiduciary duty alleged herein, Cinebase is suffering irreparable harm and will continue to suffer irreparable harm unless the conduct of Dr. Brown and Krol is enjoined by this Court.

### **ELEVENTH CLAIM FOR RELIEF**

#### **CONSPIRACY**

#### **(Against Defendants Dr. Brown and Krol)**

136. Cinebase realleges and incorporates herein by reference each and every allegation of this Complaint as though set forth in full herein.

137. Cinebase is informed and believes, and therefore alleges that, prior to their resignation from Cinebase in or about October 1997, defendants Dr. Brown and Krol knowingly and willingly conspired and agreed among themselves to misappropriate Cinebase's Intellectual Property, including its Copyrighted Works, Protetable Ideas and Trade Secret Information to the detriment of Cinebase.

138. As alleged herein, defendants Dr. Brown and Krol committed various torts and civil wrongs in connection with their conspiracy.

139. Defendants Dr. Brown and Krol did the wrongful acts herein alleged pursuant to, and in furtherance of, the conspiracy and above-alleged agreement.

140. Defendants Dr. Brown and Krol, and each of them, furthered the conspiracy by cooperating with each other in that they each agreed to and did misappropriate Cinebase's Intellectual Property for the purpose of harming Cinebase and to enable them to develop a competing company. Also, Dr. Brown furthered the conspiracy by making misrepresentations to Cinebase to cause Cinebase to falsely believe that its proprietary and confidential information would remain confidential.

141. Dr. Brown's and Krol's actions as alleged herein have directly and proximately caused Cinebase to suffer monetary damages in an amount that cannot readily be ascertained or

1 calculated at this time, but which is believed to be in excess of \$5 million.

2 142. In doing the things herein alleged, defendants Dr. Brown and Krol acted fraudulently,  
3 maliciously, oppressively and willfully, with conscious disregard for the rights of Cinebase and with  
4 the intent to cause injury to Cinebase. Defendants Dr. Brown and Krol are therefore guilty of malice,  
5 fraud and oppression, thereby warranting an assessment of punitive and exemplary damages.

### 6 PRAYER FOR RELIEF

7 WHEREFORE, Cinebase prays for relief as follows:

8 A. For a preliminary and permanent injunction enjoining the Defendants, and any  
9 officers, agents, affiliates, employees and persons in active concert or participation or privity with  
10 them who receive actual notice of the order by personal service or otherwise, from:

11 1. Using or disclosing any of Cinebase's confidential, proprietary or trade secret  
12 information obtained by Defendants through their employment at Cinebase;

13 2. Engaging in any activity directed to the development of computer software  
14 designed to perform management of large volumes of high-resolution dynamic and static media  
15 content;

16 3. Establishing and/or continuing a business intended to market or promote  
17 computer software designed to manage large volumes of high-resolution dynamic or static media  
18 content; and

19 4. Producing, selling or distributing, or inducing or contributing to the  
20 production, sale or distribution, of any work that infringes upon any copyright held by Cinebase;

21 5. Unfairly competing with Cinebase in any manner whatsoever;

22 6. Making or communicating any statements that defame or disparage Cinebase's  
23 business or products; and

24 7. Any conduct that interferes with the prospective economic advantage of  
25 Cinebase.

26 B. For an order requiring defendants to file with the Court and serve upon Cinebase's  
27 counsel within thirty (30) days after entry of the order of injunction, a report setting forth the manner  
28 and form in which Defendants have complied with the injunction.

1 C. For an order finding that, by the acts complained of herein, defendants Media  
2 Guaranty Trust, Dr. Brown, Krol, Rozenfeld, Wills and Reisinger have engaged in copyright  
3 infringement in violation of 17 U.S.C. § 106.

4 D. For an order finding that, by the acts complained of herein, defendants Media  
5 Guaranty Trust, Dr. Brown, Krol, Rozenfeld, Wills and Reisinger have engaged in trademark  
6 infringement in violation of 15 U.S.C. § 1125(a) by passing off Cinebase's products as their own.

7 E. For an order finding that Defendants have wrongfully misappropriated Cinebase's  
8 ideas;

9 F. For an order finding that, by the acts complained of herein, Defendants have engaged  
10 in trade secret misappropriation in violation of Cal. Civ. Code § 3426.

11 G. For an order finding that, by the acts complained of herein, Defendants have unfairly  
12 competed against Cinebase in violation of Cal. Civ. Code § 17200 *et seq.*

13 H. For an order finding that, by the acts complained of herein, Dr. Brown and Krol  
14 committed trade disparagement against Cinebase and its products.

15 I. For an order finding that, by the acts complained of herein, Dr. Brown and Krol  
16 breached their respective fiduciary duties to Cinebase.

17 J. For an order finding that, by the acts complained of herein, Dr. Brown committed  
18 fraud against Cinebase.

19 K. For an order finding that, by the acts complained of herein, defendants Dr. Brown and  
20 Krol engaged in a civil conspiracy against Cinebase.

21 L. For an order finding that, by the acts complained of herein, Media Guaranty Trust, Dr.  
22 Brown and Krol intentionally interfered with the prospective economic advantage of Cinebase.

23 M. For an order awarding general and/or special damages, in an amount to be fixed by  
24 the Court in accordance with proof, including punitive and exemplary damages as appropriate, as  
25 well as the Defendants' profits or gains of any kind resulting from their acts of copyright  
26 infringement, trade secret misappropriation, idea misappropriation, unfair competition, breach of  
27 fiduciary duty, fraud, conspiracy and intentional interference with Cinebase's prospective economic  
28 advantage.

1 N. For an order awarding to Cinebase compensatory damages, in an amount to be fixed  
2 by the Court in accordance with proof, but not less than \$5 million.

3 O. For an order awarding to Cinebase its costs, including attorneys fees incurred in  
4 prosecuting this action.

5 P. For an order awarding to Cinebase interest in a sum to be determined at trial.

6 Q. For an order requiring Defendants to provide notice to the public and to all customers  
7 and others with whom the Defendants have been in contact, by means of letter or advertisement, as  
8 appropriate, notifying such persons of this lawsuit and the injunctive decree rendered hereunder.

9 R. For such and other further relief as the Court deems proper and equitable.

10  
11 Date: June 9, 1998

12 Patricia L. Glaser,  
13 Mark G. Krum  
14 Kevin J. Leichter  
15 CHRISTENSEN, MILLER, FINK, JACOBS,  
16 GLASER, WEIL & SHAPIRO, LLP

17 By \_\_\_\_\_  
18 Mark G. Krum  
19 Attorneys for Plaintiff  
20 CINEBASE SOFTWARE, INC.

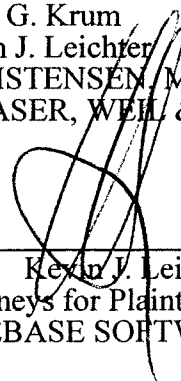
LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
3121 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 553-3000

**DEMAND FOR JURY TRIAL**

Plaintiff Cinebase Software, Inc. hereby demands a trial by jury.

Date: June 9, 1998

Patricia L. Glaser  
Mark G. Krum  
Kevin J. Leichter  
CHRISTENSEN, MILLER, FINK, JACOBS,  
GLASER, WEIL & SHAPIRO, LLP

By   
Kevin J. Leichter  
Attorneys for Plaintiff  
CINEBASE SOFTWARE, INC.

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
2121 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 583-3000



This Certificate, issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*  
REGISTER OF COPYRIGHTS  
United States of America

TXU 819-558



EFFECTIVE DATE OF REGISTRATION

*Mar* *11* *98*  
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

## TITLE OF THIS WORK ▼

HEADER FILE SOURCE CODE OF CINEBASE 2.0 COMPUTER PROGRAM  
FOR MANAGEMENT OF HIGH-RESOLUTION DIGITAL MEDIA

## PREVIOUS OR ALTERNATIVE TITLES ▼

None

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

N.A.

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

N.A.

## NAME OF AUTHOR ▼

CINEBASE SOFTWARE, INC.

## DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a  
"work made for hire"? ☒ Yes  
☐ No

## AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ► California, U.S.A.

Domiciled in ►

## WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☒ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either  
of these questions is  
"Yes," see detailed  
instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

COMPUTER PROGRAM SOFTWARE

## NAME OF AUTHOR ▼

## DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a  
"work made for hire"? ☐ Yes  
☐ No

## AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ►

Domiciled in ►

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instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

## YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1997

This information must be given in all cases.

## DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month ► N.A. Day ► Year ►

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Cinebase Software, Inc.  
11835 W. Olympic Blvd.  
East Tower, Suite 1000  
Los Angeles, CA 90064

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

## APPLICATION RECEIVED

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MAR 11 1998

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

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ONLY

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PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a &amp; 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

N.A.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

N.A.

See instructions  
before completing  
this space

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a. ☐ Copies and Phonorecordsb. ☐ Copies Onlyc. ☐ Phonorecords Only

See instruction

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.  
Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

Brian W. Kasell, Esq.

TROOP MEISINGER STEUBER &amp; PASICH, LLP

10940 Wilshire Blvd., Los Angeles, CA 90024-7000

Area Code &amp; Telephone Number ▼ (310) 824-7000

Be sure to  
give your  
daytime phone  
number

CERTIFICATION\* I, the undersigned, hereby certify that I am the

Check one ▶

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Cinebase Software, Inc.

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant, or owner of exclusive right(s) A

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Brian W. Kasell

date ▶ 3-2-98



Handwritten signature (X) ▼

Brian W. Kasell

MAIL  
CERTIFI-  
CATE TOCertificate  
will be  
mailed in  
window  
envelope

Name ▼	Brian W. Kasell, Esq.
Number Street/Apartment Number ▼	TROOP MEISINGER STEUBER & PASICH, LLP
City, State ZIP ▼	10940 Wilshire Blvd.
	Los Angeles, CA 90024-3902

## YOU MUST:

- Complete all necessary spaces
- Sign your application in space 10

SEND ALL 3 ELEMENTS  
IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable \$20 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

## MAIL TO:

Register of Copyrights  
Library of Congress  
Washington, D.C. 20559



This Certificate, issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*  
REGISTER OF COPYRIGHTS  
United States of America

REGISTRATION NUMBER

TXu 819-557



EFFECTIVE DATE OF REGISTRATION

Month *May* Day *11* Year *98*

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

PROGRAM SOURCE CODE OF CINEBASE 2.0 COMPUTER PROGRAM  
FOR MANAGEMENT OF HIGH-RESOLUTION DIGITAL MEDIA

PREVIOUS OR ALTERNATIVE TITLES ▼

None

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

N. A.

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

N. A.

NAME OF AUTHOR ▼

CINEBASE SOFTWARE, INC.

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"?  
☒ Yes  
☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country  
OR { Citizen of ► California, U.S.A.  
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☒ Yes ☐ No  
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

COMPUTER PROGRAM SOFTWARE

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

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☐ No

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YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED  
1997

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information Month ► N. A. Day ► Year ► Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

Cinebase Software, Inc.  
11835 W. Olympic Blvd.  
East Tower, Suite 1000  
Los Angeles, CA 90064

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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MAR 11 1998

TWO DEPOSITS RECEIVED

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EXAMINED

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CORRESPONDENCE  
Yes

FORM TX

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PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

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N.A.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

N.A.

—space deleted—

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Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

Brian W. Kasell, Esq.

TROOP MEISINGER STEUBER &amp; PASICH, LLP

10940 Wilshire Blvd., Los Angeles, CA 90024-3902

Area Code &amp; Telephone Number ▼

(310) 824-7000

CERTIFICATION I, the undersigned, hereby certify that I am the

Check one ▶

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Cinebase Software, Inc.

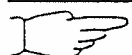
of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant, or owner of exclusive right(s) ▼

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Brian W. Kasell

date ▶ 3-2-98



Handwritten signature (X) ▼

Brian W. Kasell

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mailed in  
window  
envelope

Name ▼	Brian W. Kasell, Esq. TROOP MEISINGER STEUBER & PASICH, LLP
Number/Street/Apartment Number ▼	10940 Wilshire Blvd.
City/State/Zip ▼	Los Angeles, CA 90024-3902

## YOU MUST:

- Complete all necessary spaces
- Sign your application in space 10

SEND ALL 3 ELEMENTS  
IN THE SAME PACKAGE:

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2. Nonrefundable \$20 filing fee in check or money order payable to Registrar of Copyrights
3. Deposit material

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 Registrar of Copyrights  
 Library of Congress  
 Washington, D.C. 20559

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 2121 Avenue of the Stars, 18th Floor, Los Angeles, California 90067.

On June 9, 1998, at the direction of a member of the Bar of this Court, I served the within:

**FIRST AMENDED COMPLAINT INJUNCTIVE RELIEF AND DAMAGES**

on the interested parties in this action, by delivering a copy thereof in a sealed envelope addressed to each of said interested parties at the following address(es):

Douglas E. Lumish  
Jared Bobrow  
Weil, Gotshal & Manges, LLP  
2882 Sand Hill Road, Suite 280  
Menlo Park, CA 94025-7022

☒ (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for..

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ (BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number: .

Executed this 9th day of June, 1998, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Jenny Putwiler

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
2121 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 853-3000